App. F.-IX-4.

1927.

File No. 22-27

Previous References

Serial Nos. 1-5

Later References

General and Revenue Secretariat.

Serial Nos. June

Part B for October 1928.

SUBJECT

Criminal revision petition No 130 of 1927-28 on the file of the Chief Court of Mysore (Govt of Mysore Vs Benakappa and others)

M Gurgar
10/10/28

GENERAL AND REVENUE SECRETARIAT.

NOTES.

Revn File No. 22

FILE HEADING.

appeal from C. C. no 1719/26—27 on the file of Special 1st class Magistrate Shimoga

From Deputy Comr. Shimoga

NO. J. 1. 63/27 Dated 20. 10. 27 Received 28/10/27

Diary No.	Enclos.	Spare Copies.	Serial No. 1

BRIEF ABSTRACT OF LETTER.

forwards file of records and states that order passed in the case under Sec 437. Cr. P. does not appear to be correct and requests that Govt Advocate may be asked to move Chief Court in the Matter.

NOTES AND ORDERS.

1) Sd. An order of discharge under S. 253 does not amount to acquittal. The complaint was first entertained by 2nd class Magistrate who followed the procedure for warrant cases instead of that for summon cases & he discharged accused.
Sessions Judge in Revision passed order directing further enquiry and the case was transferred to file of 1st class Magistrate. On 18-7-27 counsel for complainant closed their case and Statement of accused was taken. At this stage it was found that order of Sessions Judge was not according to law and the records submitted to D. G. for obtaining order of Chief Court.

NOTES—First Sheet.

WD 1881—GPB—30,000—1-8-21

General and Revenue Secretariat. File No. 72 of 192 /

Serial No.

according to 29. C. C. Reports, Sessions Judge can't revise an order of discharge passed in a Summons Case As both D. M and Sessions Judge have personal pecuniary interest reference is made to Govt to instruct Govt. Advocate to move the chief Court according to law. Orders are solicited on the point above.

Recd 27/10/27. 27/10

2 The 2nd class magistrate of Shimoga passed an order of discharge under section 253 Cr. P. Code on a complaint of an offence under section 341 & 447 I.P.C after examining only the complainant & the accused. (Fl:5)

3 The Sessions Judge ordered further enquiry under section 437 Cr. Pr. Code (Fl: 7)

The case was further enquired into by the I class magistrate Shimoga and during the enquiry it was discovered that the offences under sections 341 & 447 I.P.C being Summons Cases, the order of discharge really amounted to one of acquittal and therefore the Sessions Judge could not order further enquiry

5 The I class magistrate sentenced

NOTE—Contn. sheet

WD 0324—GPB—60,000—24-5-27

General and Revenue Secretariat.

APH No. 22 of 1927

Serial No.	
G.O.No.P.2627 7/11/1927.	1) Forwarded W.C. to the Govt Advocate, for favour of opinion, with compliments. Reference para 9 above. Sd/- 1.11.27 B.O Sd/- Hingorani for Secy to Govt- Laws Dept.
G.O.No.18/1927-28. dt 2.11.1927.	11) I have gone through the records of the case in all its stages. There is no doubt that the 2nd Class Magistrate who tried the case in the first instance was in error in proceeding to pass an order of discharge in a summons case before recording all the Evidence available or likely to be offered on behalf of the Complainant. It is also clear that there is some doubt in the proposition that an order of discharge in a Summons case being really in the nature of an acquittal, cannot be set aside by a Sessions Judge acting under Section 437 Cr. Pro. Code. 12) The order passed by the Sessions Judge, Shimoga, setting aside the

NOTE—Contn. sheet.

the order of discharge and directing further enquiry, cannot, therefore be supported the only course now open is to move the Chief Court to have a proper order passed to set aside the irregularities

13) The questions for consideration therefore are - (1) What is the nature of the action that has to be taken to set right the irregularities and (2) whether in view of the merits of the case it is necessary to proceed further.

14) As regards the first question the order of the Sessions Judge, which is unsustainable, has now to be set aside and this can be done by moving the Chief Court by filing a revision petition. The District Magistrate cannot make a reference to the Chief Court under Section 438(1) of the Criminal Procedure Code as the order is that of the Sessions Judge & the Government have therefore to move in the matter.

15) As regards the setting aside of the order of discharge passed by the 2nd Class Magistrate, if it is the intention

intention of Government to have the matter reopened with a view to have a further enquiry - the proper course would be to file an appeal against the order of discharge - as it is in the nature of an acquittal. The Govt cannot file an application for a revision of that order as they have a right of appeal under section 417, and as such Section 439 (5) Cr Pc Code is a bar to a revision petition.

16) Coming now to the second question - as to whether on the merits of the case further enquiry is necessary in the interests of justice, I am inclined to the view that further action is not desirable.

17) The complaint petition itself discloses the fact that the dispute is of a civil nature. Indeed a suit had actually been filed by the Complainant against the accused and the members of his family in OS. No 1249/1920-21 for a permanent injunction

injunction restraining the defendan
in the case from interfering with
the plaintiffs' possession and enjoym
of the property and for damages.
The defendants, including the present
accused, contended that the land in
dispute belonged to themselves absolutely
and was in their actual possession.

18) That suit was filed on 4-7-1919
and was disposed of on 25-5-1926
and an appeal has now been
preferred by the defendants in the case
against the decree and an order for
stay of execution of that decree has
also been obtained. The decree relied
on by the plaintiff-complainant is
not therefore final and is sub
judice.

19) A perusal of the judgment
of the trial Court in the aforesaid
civil suit shows that the land in
question originally stood in the name
of the complainant's father and that
in consequence of his failure to pay
the Kandayam thereof - the land

was

was either transferred or actually
sold at a revenue sale in favour
of the ancestors of the defendants,
and that on account of the dispute
between the parties the land has all
along been lying fallow and that
it continued to be so at the time
of the occurrence. It is also in evidence
that the defendants have, for a
number of years past, been paying
the assessment on the land and
are also in possession thereof. I
do not want to anticipate the
decision of the appellate Court at
this stage, but I must say that the
defendants have an arguable
case and have a fair chance of success.

20) Under the circumstances
I cannot pretend to say that
the act of the accused in preventing
the complainant and his men
from ploughing the land amounts
to criminal trespass and wrongful
restraint and the refusal of the
Second Class Magistrate to proceed
further with the trial though
technically erroneous,
appears

appears to be correct on the merits as the accused apparently acted under a bona fide claim of right. Even the further enquiry held by the 1st Class Magistrate to whom the case was transferred after remand, shows that the complainant had no more evidence to adduce than what had already been placed before the 2nd Class Magistrate, except the filing of the District Court's notes in Rit. No. 294 of 25-26 which have nothing to do with the question of the title to the property and the possession and enjoyment thereof. The materials now available are thus the same as those before the 2nd Class Magistrate. That being so I am of opinion that the order passed by that Magistrate holding that no case has been made out against the accused is substantially correct.

21) All that has now to be done, therefore, is to have the order of the learned Judge set aside by filing a revision petition before the Chief Court. It is unnecessary, in my opinion, to have the order of the 2nd Class Magistrate set aside.

2.11.27.

P.T.O.

General and Revenue Secretariat. File No. 22 of 1927.

Serial No.

Hence the party aggrieved has a right to move the Chief Court to set aside the illegal order in the exercise of its powers under Sec 439 Cr. P.

29) This is the decision in 29 Beng. Ch. Cr. Ref 292.

Secondly the Govt Advocate is in error in thinking that the chief court can be moved only to set aside the order of Sessions Judge ~~only~~ & that ~~the~~ it is unnecessary to have the order of discharge set aside.

28) It appears to me that when the chief court ~~has~~ calls for records either on the motion of a party or for the purpose of satisfying itself not only as to the regularity & legality of any proceedings or orders made therein, it will be its duty to correct any order passed by a lower court.

[See the powers of the High Court under Sections 435 & 439 Cr. P. C. & Woodroffe on Cr. P. C. pp 487, & 507.]

29) Hence the Chief court will necessarily set aside the order of discharge passed by the 2nd class magistrate when the Govt will move the court to set aside the order of Sessions Judge. Moreover it will not be right & proper on the part of Govt to allow an illegal order of discharge to continue without taking proper steps to get it set aside

NOTE—Contn. sheet.

WD 0324—GPB—60,000—24-5-27

General and Revenue Secretariat.

Title No. 22 of 192 7

Serial No.

The argument of the Govt Advocate regarding the merits of the case is beside the point under consideration.

30) We are now only concerned with the law of procedure & not on the merits facts of the case

The DC magistrate has made a reference to Govt on the question of legality of the orders passed by Sd Magistrate & Sessions Judge & not as to the merits of the case.

31) Even on question of fact there is considerable room to doubt the conclusion arrived at by him. on this question the Sessions Judge has shown that the action of the accused was not bonafide especially in the light after the Civil Court has passed a decree.

X T.

32) For these reasons the Govt Advocate may be asked to move the Chief Court to set aside the order of discharge following the decision in 29 Myp ch ct R. 292. The reason why the DC magistrate has moved in the matter is that if a conviction be had the parties may get it quashed on the ground of illegality in the proceedings.

3562 3/11

3/11

8 8/11

TE—Comm. sheet.

WD 0324—GPB—60,000—24-5-27

2069
P

13

App. F. III—2]

General and Revenue Secretariat.

File No. 22 of 1927

Serial No.

33 I do not think that Govt, as a Govt, need worry about these ~~p~~ quasi-civil cases. They are a great nuisance, & ~~only~~ ~~values~~ ~~entitled to~~ ~~encouragement~~ need not be encouraged.

34) If ~~I was~~ personally to the opposite party itself to go to the Chief Court in revision against the order of the Sessions Judge, we might have left it as that; but as that has not been done, it is for us to advise the Govt Advocate to file a ~~joint~~ revision petition against the order of the Sessions Judge, & to pursue in argument the errors committed by the Magte & the Sessions Judge; & leave it entirely to the Chief Court on the evidence & merits to decide whether to confirm the original order of the 2nd Cl. Magte or the increased order of the Sessions Judge. As such Govt need not ask CC. to take either course definitely & leave these cases

^ or if possible a joint petition of both petitions against both the orders

^ I presume the CC will hear the lawyers of the parties & be guided by their decision will depend on these arguments, the records & merits

NOTE.—Contn. sheet

WD 0324—GPB—60,000—24-5-27

4/11/27

4/11/27

General and Revenue Secretariat. File No. 22 of 1927

Serial No.	
	draft Sub'd as per orders ci para 34 above MBG 5.11.27 Draft filed for consideration Sec'y (L.D) 6/11 Draft revised & submitted for consideration 1st Asstt Secy 7/11 3670 7/11 7.11 7-11 6/11/27 8/11 8/11 2d 8/11
2	To the Govt Advocate No P 2423 dy 9/11/27 Forwards the ~~record~~ file of records in C.C. No. 171 of 26-27 on the file of the Spl 1st Class Magte, Shimoga requesting that a petition for reversing the orders of the lower courts on the grounds of illegality &c. be presented to the Ch. Court
3	From the D.C. Shimoga No J.1.63/27-28 dd 11 Nov 27 requesting that records in C.C. No 171 of 26-27 on the file of Spl 1st Class Magistrate's Court may be returned as they are called for by the Registrar Civil Court Sent MBG 15.11.27

NOTE—Contn. sheet

WD 0324—GPB—60,000—24-5-27

Serial No.

filed by the Govt —

The Chief Court has set aside the order for further enquiry passed by the Sessions Judge as also the order of discharge passed by the 2nd class magistrate and directed a fresh enquiry into the matter according to law —

For perusal

3741/710

Dop — 4/10/28 for 4/10

(3rd Member) 2/2 5/10

Laws 8/10

Note B

Dop 8/10/28 —

noted 10/10/28

2969

In all future correspondence please quote No. J.I. 63/27-28.

OFFICE OF THE DEPUTY COMMISSIONER,
SHIMOGA DISTRICT.

Shimoga Dated 20th October 1927

Law 22-27-F

From

B. T. KESAVAIENGAR, Esq., B. A.,
Deputy Commissioner, District Magistrate,
Shimoga District.

To

B. Nagappa, Esq., Bar-at-law,
Secretary to Government,
Law Department,
Bangalore.

Sir,

I have the honour to submit herewith the entire file of proceedings in C.C. No. 171 of 26-27 on the file of the Special 1st Class Magistrate, Shimoga, together with a copy of the brief history of the case under rule 6 of the Rules for the conduct of the Legal affairs of Government and to state that the order passed under Section 437 Cr. P.C. by the Sessions Judge, Shimoga, in this case appears to be not quite correct, as the order of discharge under Section 253 Cr. P.C. in such a case amounts to an order of acquittal. I request that you will be good as to instruct the Government Advocate to move the Hon'ble the Chief Court in accordance with law, in case you agree with me.

I have the honour to be,
Sir,
Your most obedient servant,

District Magistrate,
Shimoga District.

2

APP. F. VI. Gl.]

SUBJECT.....

.....

.....

Section Law

File No. 2227

Serial No. 2

Diary No. of letter replied to.....

No. 12428 Records

General and Revenue Secretariat

( )

192

To

The Govt Advocate,

Bangalore

Date of issue 9/11/27

Signed by.....

Sir,

I have the honour to enclose herewith the file of records in C.C No 171 of 28-27 on the file of the Special First Class Magistrate Shimoga and to request that a Revision petition may be filed in the chief court against the order of the Sessions Judge or if possible against both the orders of the 2nd class Magistrate leaving it entirely to the Chief Court whether to ratify the original incorrect order of the 2nd class Magistrate or the incorrect order of the Sessions Judge

petition praying for revising orders of the lower courts on the grounds of illegality of committed & to pass such orders as the chief court deems fit be presented to the Chief Court

List of enclosures.....

Copied by.....

Examined by .....

over

8

The errors committed by the Magistrate and Sessions judge may be limited on argument

Leave etc.

Sd/ Seetapathi
Leave Defl.

W.M. 5/11

No P 2453 dy 11/11/27

copy to Dr. Dr. Shamji

with reference to his letter
No J. 1. 63/27-28.

x In this connection I am to invite your kind attention to the mention of the upper Court in Krishnamurthi Chikkanna vs Ho the Gouda (1924) 29 Mysore L.C. Rep. page 192 which is on all fours with the present case and in which the Court has decided not only the ordinary Magistrate but also the Medical officer is [illegible] passed by the Magistrate.

240/27
P
4

In all future correspondence please quote No. J.1. 63/27-28.

OFFICE OF THE DEPUTY COMMISSIONER,
SHIMOGA DISTRICT.

Shimoga Dated 11th November 1927

From

Law 22-27.3

B. T. KESAVAIENGAR, Esq., B. A.,
Deputy Commissioner,
Shimoga District.

To

B. Nagappa, Esq., Bar-at-law,
Secretary to Government,
Law Department,
Bangalore.

Sir,

I have the honor to request that the file of Records in C.C.No. 171 of 26-27 on the file of the Special I Class Magistrate's Court together with its enclosures sent with this Office letter No.J1.63/27-28 dated 20th October 1927 may kindly be returned as the same has been called for by the Registrar, Chief Court, Bangalore, for reference in C.R.P. No. 26/27-28 on the file of the said Court.

I have the honor to be,
Sir,
Your most obedient servant,

For District Magistrate,
(absent on tour)
Shimoga District.

APP. F. VI. Gl.]

5

SUBJECT.....

.....

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Section Law

File No. 22. 2/

Serial No. 4

Diary No. of letter replied to .....

No. P 2622 (4

General and Revenue Secretariat

( )

the *192*

To

The Govt. Advocate

Date of issue 19/11/27

Signed by W.E.S

Sir,

I have the honour to enclose a copy of letter No J. 1. 63927-28 d 11 Nov 27 from D.C Shimoga, and to request that the records referred to therein ~~called for~~ which were forwarded to you on this Pres letter No P 2423 d 9-11-27, may kindly be sent to the Registrar Chief Court.

List of enclosures.....

I have the

Copied by.....

Examined by .....

P 2623

19/11 Copy to D.C. Shimoga with compliments with reference to his letter No J. 1. 63927-11.11.27 for information.

28/11/27 Secy Law Dept

over

WD 0562 -GPB—31,000—17-8-25

Govt 1571

6 1537 1928

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

In reply please refer to
No. 252

Tel. Address :— "JURIST", Bangalore.

Bangalore.....1st.....October.....1928.

2nd

Law 22.2.5

FROM

K. SHANKARANARAYANA RAO, ESQ, M.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

The Secretary to the Government
of H. H. The Maharaja of Mysore,
Law Department, BANGALORE.

SIR,

With reference to your letter No. P.2423/Law. dated the 9th November 1927, I have the honor to state that Criminal Revision Petition No. 130 of 1927-28 on the file of the Chief Court of Mysore, (Government of Mysore VS. Benakappa and another) came on for final disposal on the 10th September 1928 and an order was passed allowing the Petition. The order of discharge passed by the Trial Magistrate is set aside and a fresh enquiry directed to be made in the case according to law.

2. A copy of the order passed in the case is forwarded herewith for the information of Government.

I have the honor to be,
Sir,
Your most obedient servant,

K Shankaranarayana Rao

GOVERNMENT ADVOCATE.

CSN.

26/9/27

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Monday the 10th day of September 1928.

BEFORE

MR. JUSTICE M. RAMACHANDRA RAO.

***

Criminal Revision Petitions Nos. 26 & 130 of 1927-28.

In Cr. R. P. 26 of 27-28.

Malige Rudrappa. .. Accused. .. Petitioner.
(By Mr. A. R. Nageswara Iyer)

VS.

Records returned.

Benakappa. .. Complainant. .. Opponent.
(By Mr. N.V.Narasimha Iyengar for Mr. T.R.Sreenivasiengar).

Criminal Revision Petition against the order of the Sessions Judge of Shimoga in Criminal Revision Petition No.6 of 26-27 setting aside the order of discharge passed by the Special Second Class Magistrate of Shimoga in - Criminal Case No.269 of 1925-26.

In Cr. R.P. No.130 of 1927-28.

Government of Mysore. ... Petitioner.
(By the Government Advocate).

VS.

1. Benakappa. ... Complainant ...
2. Rudrappa. ... Accused ... Opponents.

(Opponents 1 and 2 called and found to be absent).

Criminal Revision Petition praying that the order of the Sessions Judge of Shimoga in Cr. R. P. 6 of 26-27 and the order of the Special First Second Class Magistrate, Shimoga in Cr. Case No.269 of 25-26 may be revised. These

These petitions coming on for hearing on Friday, the 10th day of August 1928, the Court pronounced the following :-

O R D E R.

Benakappa instituted a complaint on 18-6-1926 under Section 447 and 441, Indian Penal Code, against Malige Rudrappa in the Court of the II Grade Magistrate, Shimoga in Criminal Case No. 269 of 1925-26. Being a Summons case the Magistrate was bound to follow the procedure prescribed in Chapter XX of the Code of Criminal Procedure. As the accused did not plead guilty the Magistrate should have proceeded to hear the Complainant and take all such evidence as may be produced in support of the prosecution and also to hear the accused and take all such evidence as he produced in his defence, as laid down in section 244 of the Code. Instead of this, the Magistrate examined only the complainant, took down the statemer of the accused heard arguments and passed an order discharging the accused under Section 253. which applied only to warrant cases. The order of the Magistrate was therefore clearly illegal.

Thereupon, the complainant filed a Revision Petition in Criminal Revision Petition No. 6 of 1926-27 before the Sessions Judge, Shimoga, who set aside the order of discharge and directed that further enquiry be made into the case.

In this Court the accused Malige Rudrappa has filed Criminal Revision Petition No.26 of 1927-28

and

and asks that the order of the learned Sessions Judge may be set aside.

The Government also presented a Revision Petition in Criminal Revision Petition No. 130 of 1927-28 asking that the orders of both the lower courts may be set aside and that further suitable orders may be passed in the case.

The first question for decision is whether the learned Sessions Judge was right in setting aside the order of discharge passed by the Trial Magistrate. The contentions of the learned counsel for the petitioners in both these Revision Petitions were that the order of discharge passed by the trial Magistrate amounted to one of acquittal and that the learned Sessions Judge was not therefore competent to interfere with it under Section 437 Criminal Procedure Code. Reliance was placed on two decisions of this court in 26 Mysore Chief Court Reports 261 and 29 Mysore Chief Court Reports 292 and also on a decision of the Madras High Court reported in 6 Indian Cases 385. In the second of these cases the point was not expressly decided. I however follow the other two decisions and hold that the order of discharge amounted to an acquittal and that the learned Sessions Judge had no power to take action under Section 437 Criminal Procedure Code and set aside the order of discharge. His order is accordingly reversed

The next question for decision is whether the order passed by the Trial Magistrate was proper. The contention of the learned Government Advocate in Criminal Revision Petition No. 130 of 1927-28 was that the order of the Trial Magistrate was bad in law and should be set aside. As already stated the procedure prescribed by law has not been followed by the trial Magistrate and his order of discharge cannot

10

cannot be allowed to stand. This contention therefore succeeds.

It was next urged by Mr. A.R. Nageswara Iyer that the subject matter of the complaint was one of a civil nature, that the order of discharge was perfectly justified under the circumstances of the case thcugh the - Trial Magistrate should have styled it as an acquittal and that no further enquiry need be ordered to take - place. I would have considered these contentions if the Trial had been regularly held and all the evidence on both sides had been recorded. As the case now stands, there has been no proper trial at all and I think that the ends of justice do require that the matter should be enquired into further.

In the result, the order of discharge passed by the Trial Magistrate is also set aside and a fresh enquiry directed to be made in the case according to law.

SD/- M. RAMACHANDRA RAO.

J U.D G E.

"C O P Y"

GOVERNMENT ADVOCATE.

CSN.